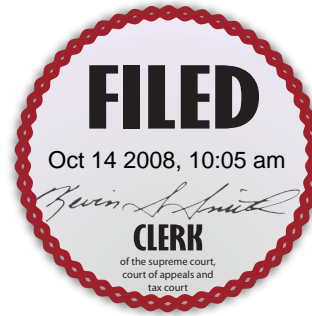


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

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Merrillville, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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DONALD FRAZIER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A03-0803-CV-122
	)	
PALISADES ACQUISITION XVI, LLC,	)	
	)	
Appellee-Plaintiff.	)	

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APPEAL FROM THE ST. JOSEPH CIRCUIT COURT  
The Honorable Michael G. Gotsch, Judge  
The Honorable David T. Ready, Magistrate  
Cause No. 71C01-0609-CC-850

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**October 14, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

## **Case Summary**

Donald Frazier appeals the judgment in favor of Palisades Acquisition XVI, LLC (“Palisades”) for \$5,074.47. We dismiss.

### **Issue**

Frazier raises two issues. We address the dispositive issue, which we restate as whether Frazier’s notice of appeal was timely filed.

### **Facts**

Centurion Capital Corporation, an assignor of Palisades, filed suit against Frazier to collect a debt in the St. Joseph Circuit Court on June 30, 2006.<sup>1</sup> The chronological case summary (“CCS”) reflects that Frazier was served with notice on December 18, 2006. The trial court entered a default judgment of \$5,074.47 against Frazier on March 6, 2007. Following a proceeding supplemental, the trial court issued an order regarding garnishment of wages on August 20, 2007.

Frazier did not file a notice of appeal within thirty days of the default judgment or the ordering following the proceedings supplemental. Instead, Frazier filed a “Motion to Dismiss Proceedings Supplemental” on November 14, 2007, alleging that he was improperly served, that the wage garnishment amounts to an extreme hardship, that the debt was invalid, and a potential violation of the Fair Credit Reporting Act occurred. Following a telephonic hearing, the trial court denied Frazier’s motion on December 4, 2007. On February 8, 2008, Frazier filed two motions with the trial court requesting it to

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<sup>1</sup> The clerk assigned cause number 71C01-0606-CC-850 to this matter. Frazier attaches a number of pleadings from another action, National Check Bureau, Inc. v. Donald Frazier, Cause No. 71D05-0412-CC-1437, which we disregard.

vacate the judgment and quash the proceedings supplemental. The trial court found that the motions were “an attempt to relitigate a prior motion filed on December 4, 2007” and denied both motions. Appellant’s App. p. 20. This appeal followed.

### **Analysis**

“A party initiates an appeal by filing a Notice of Appeal with the trial court clerk within thirty (30) days after the entry of Final Judgment. However, if any party files a timely motion to correct error, a Notice of Appeal must be filed within thirty (30) days after the court’s ruling on such motion . . . .” Ind. Appellate Rule 9(A)(1). Frazier did not file a proper notice of appeal within thirty days of the trial court’s March 6, 2007 default judgment or the August 20, 2007 order; nor did he file a timely motion to correct error to extend the time for an appeal.<sup>2</sup>

In this appeal, he attempts to argue his initial motion to dismiss constituted a proper Indiana Trial Rule 60(B) motion. We disagree. Even if that motion was a properly made Rule 60(B) motion, the trial court denied it on December 4, 2007 and any notice of appeal would have had to be filed within thirty days. Frazier’s subsequent attempts to vacate the judgment were merely repetitive and did not extend his time to file an appeal. See Ind. Trial Rule 53.4(A) (explaining that such repetitive motions “shall not delay the trial or any proceedings in the case, or extend the time for any further required or permitted action, motion, or proceedings under these rules.”)

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<sup>2</sup> We note that Frazier did file an untimely brief and subsequently moved for a permission to file a belated brief, which was granted. The allowance of a belated brief, however, does not change the nature of Frazier’s belated notice of appeal.

“The timely filing of a notice of appeal is a jurisdictional prerequisite, and failure to conform to the applicable time limits results in forfeiture of an appeal.” Trinity Baptist Church v. Howard, 869 N.E.2d 1225, 1227 (Ind. Ct. App. 2007), trans. denied; App. R. 9(A)(5) (“Unless the Notice of Appeal is timely filed, the right to appeal shall be forfeited . . . .”). Frazier’s right to appeal has been forfeited.

### **Conclusion**

Frazier did not timely file this appeal, and it must be dismissed.

Dismissed.

FRIEDLANDER, J., and DARDEN, J., concur.